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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/690,436
Filing Date: October 22, 2003
Appellant(s): TAN, SHARON MI LYN

MAILED

OCT 05 2007

Group 3700

Sean P. Daley
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 06/21/07 appealing from the Office action mailed 01/09/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6371944	Liu et al.	04-2002
5588443	Davidson	12-1996
5413561	Fischell et al.	05-1995
5357961	Fields et al.	10-1994

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liu et al. (USPN 6,371,944) in view of Davidson (USPN 5,588,443) and further in view of Fischell et al. (USPN 5,413,561).

Liu et al. disclose a system for use in the body comprising a catheter 7, a side arm, a lumen through the side arm 9, which communicates with the catheter lumen and a one-way valve 5 and an intervention device such as the wire 18. Liu et al. however does not teach the wire to be coated with an antimicrobial agent. Davidson discloses a wire for use in the body, which is coated with antimicrobial, anticoagulants or, medicaments as desirable or for reducing adhesion or other adverse cellular or tissue response to surfaces in contact with blood. See column 4, lines 25-35. It would have been obvious to one of ordinary skill in the catheter art at the time the invention was made to modify the wire used to contact with blood of Liu et al. with an antimicrobial coating as taught by Davidson in order to prevent infections within the internal system of the patient. Liu et al. and Davidson in combination is silent to a cap coupled to the guidewire/intervention device. Fischell et al. teach a cap coupled to a guidewire in order to provide a handle or sealing at the port/luer end. It would have been obvious to one of ordinary skill in the art to modify the device of Liu et al. in view of Davidson with a cap as taught by Fischell et al. in order to provide a handle or sealing end to prevent contamination or leaking of fluids at the proximal end.

With respect to claims 7-9 and 16-18, Liu et al. in view of Davidson does not disclose a threaded or stopper cap with the rod affixed to the cap. Fischell et al. disclose a sealing cap 80 for sealing the system to reduce the blood loss when inserting guiding catheters/rods/wires. See figures 1-3 which discloses a stopper cap and figure 7 which disclose a threaded cap. It would have been obvious to one of ordinary skill in the

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medical art to modify the device of Liu et al. with an end cap for the side arm as taught by Fischell et al. in order to reduce blood loss when inserting the wire into the side arm.

With respect to claims 5 and 14, it is well known in the surgical and medical arts to prepare/swab a patient with iodine before injecting or surgically introducing a device into a patient. With that knowledge in mind, it would have been obvious to one of ordinary skill to swab/coat a device with Iodine as a mere obvious selection of medicament which would prevent infection.

With respect to the claims 20-26, the intervention device is capable of performing the function of remaining in the catheter lumen during fluid flow. Further, it is also considered to be associated with a hemodialysis procedure lacking any structural distinguishing features. Injections and infusions are well known procedures which are associated with hemodialysis.

Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liu et al. (USPN 6,371,944) in view of Davidson (USPN 5,588,443) and further in view of Fields et al. (USPN 5,357,961).

Liu et al. and Davidson teaches the invention as substantially claimed. See above.

However, they are silent to a cap connected to a guidewire/ intervention device. Fields et al. teach a guidewire/ intervention device having a cap for manipulation of the guidewire/intervention device (see column 4, lines 66-column 5, lines 6) and for sealing against the port and for stopping the guidewire at a fixed location relative to the

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catheter. (See column 4, lines 66-column 5, lines 6). It would have been obvious to one of ordinary skill in the art of handling guidewires to modify the guidewire/intervention device of Liu et al. and Davidson with a cap/handle as taught by Fields et al. in order to provide a larger gripping surface for manipulating and maneuvering the guidewire/intervention device.

(10) Response to Argument

Applicant's arguments filed 06/21/07 have been fully considered but they are not persuasive since the Examiner is interpreting the claims in the broadest possible language.

With respect to the rejection under Liu et al. in view of Davidson and further in view of Fischell et al., it is well known one of ordinary skill in the medical/surgical art to interchangeably call a "catheter" a "needle" and vice versa. Further, structurally a needle is a tube and a catheter is a tube. Since the claim language does not structurally distinguish a catheter from a needle, it is the Examiner's position that the prior art still applies and anticipates the broad claim language.

With respect to Appellant's argument on page 5 of the brief, the Examiner is taking the position that the claims are directed to a device/apparatus and as long as the device of the prior art is capable of performing the function, then it is considered to be anticipated.

With respect to appellant's arguments on page 6, the Examiner is maintaining the position that it would have been obvious to one of ordinary skill in the medical/surgical

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art to modify to prevent contamination or leaking of fluids since in the medical/surgical field contamination is a problem that medical personal find necessary in the health care to prevent and maintain sterile environment/instruments as much as possible. With respect to the leaking of the fluids , in preventing contamination medical personnel are fully motivated to further prevent leaking as a further improvement to a device to prevent contamination or patient from bleeding out.

With respect to the rejection under Liu et al. in view of Davidson and further in view of Fields, Appellant does not have any convincing argument other than there is "no suggestion to combine these references". In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, guide wires are well known to have caps or some sort of handling element/mechanism to assist in handling/holding the guidewire at the proximal end/portion. It would have been obvious to one of ordinary skill in the medical/surgical art to modify the guidewire/intervention device of to have a cap in order to manipulate/maneuver the device without physically contacting the guidewire/intervention device at points which would contaminate the patient/caregiver.

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· **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

LoAn H. Thanh



Primary Examiner

Conferees:



Nick Lucchesi

NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

Eleni Mantis-Mercader

*Cris Rodriguez for Eleni Mantis
Mercader*

CRIS RODRIGUEZ
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700